

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

STEVEN MCDERMOTT and  
STACEY MCDERMOTT  
Plaintiffs,

v.

DOCKET NO: 04-CV-12253

FEDEX GROUND PACKAGE SYSTEMS,  
INC., T.S. PRUITT, ALLEGIANCE  
HEALTHCARE, INC., D. PONCE, E.W.  
WYLIE CORPORATION, D.W. SMITH,  
ARSENBERGER TRUCKING, INC., J.T.  
FOSBRINK, RYDER TRUCK RENTAL,  
LORRAINE ODZANA as  
ADMINISTRATRIX OF THE ESTATE  
OF JAMES J. ODZANA, SHORELINE  
TRANSPORTATION, INC., JACLYN  
PALETTA as ADMINISTRATRIX OF  
THE ESTATE OF MARIO J. CASTRO  
Defendants.

---

**ANSWER OF DEFENDANTS ARSENBERGER TRUCKING, INC., and J.T.  
FOSBRINK TO PLAINTIFFS' SECOND AMENDED COMPLAINT**

**FIRST DEFENSE**

The Second Amended Complaint fails to state a claim upon which relief may be granted.

**SECOND DEFENSE**

The defendants respond to the allegations of the Second Amended Complaint as follows:

I. Parties

1. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

2. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

3. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

4. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

5. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

6. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

7. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

8. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

9. The defendants admit the allegations contained in this paragraph.

10. The defendants admit the allegations contained in this paragraph.

11. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

12. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

13. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

14. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

## II. Jurisdiction

15. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

16. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

17. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

III. Facts

18. The defendants deny the allegations contained in this paragraph.

19. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

20. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

21. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

22. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

23. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

24. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

25. The defendants deny the allegations contained in this paragraph.

26. The defendants deny the allegations contained in this paragraph.

27. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

28. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

29. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

30. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

31. The defendants deny the allegations contained in this paragraph.

32. The defendants deny the allegations contained in this paragraph.

IV. Negligence  
Fedex Ground Package Systems, Inc.

33. The defendants repeat their responses to paragraphs 1-32 above as if fully set forth herein.

34. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

35. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

36. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

V. Negligence  
T.S. Pruitt

37. The defendants repeat their responses to paragraphs 1-36 above as if fully set forth herein.

38. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

39. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

40. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

VI. Loss of Consortium  
Fedex Ground Package Systems, Inc.

41. The defendants repeat their responses to paragraphs 1-40 above as if fully set forth herein.

42. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

43. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

44. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

VII. Loss of Consortium  
T.S. Pruitt

45. The defendants repeat their responses to paragraphs 1-44 above as if fully set forth herein.

46. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

47. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

48. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

VIII. Negligence  
Allegiance Health Care, Inc.

49. The defendants repeat their responses to paragraphs 1-48 above as if fully set forth herein.

50. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

51. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

52. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

IX. Negligence  
D. Ponce

53. The defendants repeat their responses to paragraphs 1-52 above as if fully set forth herein.

54. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

55. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

56. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

X. Loss of Consortium  
Allegiance Health Care, Inc.

57. The defendants repeat their responses to paragraphs 1-56 above as if fully set forth herein.

58. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

59. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

60. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XI. Loss of Consortium  
D. Ponce

61. The defendants repeat their responses to paragraphs 1-60 above as if fully set forth herein.

62. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

63. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

64. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XII. Negligence  
E.W. Wylie Corporation

65. The defendants repeat their responses to paragraphs 1-64 above as if fully set forth herein.

66. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

67. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

68. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XIII. Negligence  
D. W. Smith

69. The defendants repeat their responses to paragraphs 1-68 above as if fully set forth herein.

70. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

71. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

72. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XIV. Loss of Consortium  
E.W. Wylie Corporation

73. The defendants repeat their responses to paragraphs 1-72 above as if fully set forth herein.

74. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

75. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

76. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XV. Loss of Consortium  
D. W.Smith

77. The defendants repeat their responses to paragraphs 1-76 above as if fully set forth herein.

78. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

79. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

80. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XVI. Negligence  
Arsenberger Trucking, Inc.

81. The defendants repeat their responses to paragraphs 1-80 above as if fully set forth herein.

82. The defendants deny the allegations contained in this paragraph.

83. The defendants deny the allegations contained in this paragraph.

84. The defendants deny the allegations contained in this paragraph.

WHEREFORE, the defendants deny that the plaintiff is entitled to judgment in any amount.

XVII. Negligence

J.T. Fosbrink

85. The defendants repeat their responses to paragraphs 1-84 above as if fully set forth herein.

86. The defendants deny the allegations contained in this paragraph.

87. The defendants deny the allegations contained in this paragraph.

88. The defendants deny the allegations contained in this paragraph.

WHEREFORE, the defendants deny that the plaintiff is entitled to judgment in any amount.

XVIII. Loss of Consortium

Arsenberger Trucking, Inc.

89. The defendants repeat their responses to paragraphs 1-88 above as if fully set forth herein.

90. The defendants deny the allegations contained in this paragraph.

91. The defendants deny the allegations contained in this paragraph.

92. The defendants deny the allegations contained in this paragraph.

WHEREFORE, the defendants deny that the plaintiff is entitled to judgment in any amount.

XIX. Loss of Consortium

J.T. Fosbrink

93. The defendants repeat their responses to paragraphs 1-93 above as if fully set forth herein.

94. The defendants deny the allegations contained in this paragraph.

95. The defendants deny the allegations contained in this paragraph.

96. The defendants deny the allegations contained in this paragraph.

WHEREFORE, the defendants deny that the plaintiff is entitled to judgment in any amount.

XX. Negligence  
Ryder Truck Rental

97. The defendants repeat their responses to paragraphs 1-96 above as if fully set forth herein.

98. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

99. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

100. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XXI. Negligence  
Odzana

101. The defendants repeat their responses to paragraphs 1-100 above as if fully set forth herein.

102. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

103. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

104. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XXII. Loss of Consortium  
Ryder Truck Rental

105. The defendants repeat their responses to paragraphs 1-104 above as if fully set forth herein.

106. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

107. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

108. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XXIII. Loss of Consortium  
Odzana

109. The defendants repeat their responses to paragraphs 1-108 above as if fully set forth herein.

110. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

111. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

112. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XXIV. Negligence  
Shoreline Transportation, Inc.

113. The defendants repeat their responses to paragraphs 1-112 above as if fully set forth herein.

114. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

115. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

116. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XXV. Negligence  
Paletta

117. The defendants repeat their responses to paragraphs 1-116 above as if fully set forth herein.

118. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

119. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

120. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XXVI. Loss of Consortium  
Shoreline Transportation, Inc.

121. The defendants repeat their responses to paragraphs 1-120 above as if fully set forth herein.

122. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

123. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

124. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XXVII. Loss of Consortium  
Paletta

125. The defendants repeat their responses to paragraphs 1-124 above as if fully set forth herein.

126. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

127. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

128. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

**AFFIRMATIVE DEFENSES**

**THIRD DEFENSE**

The defendants deny each and every allegation of the Plaintiffs' Second Amended Complaint except as specifically admitted above.

#### **FOURTH DEFENSE**

By way of affirmative defense, the defendants say that the action is barred by the applicable statute of limitations and by the doctrines of laches.

#### **FIFTH DEFENSE**

By way of affirmative defense, the defendants say that if the plaintiff suffered damages as alleged, such damages were caused by someone for whose conduct the defendants are not legally responsible.

#### **SIXTH DEFENSE**

By way of affirmative defense, the defendants state that this action shall be dismissed for insufficiency of process.

#### **SEVENTH DEFENSE**

By way of affirmative defense, the defendants state that they reserve the right to assert further affirmative and other defenses as they become evident through discovery or investigation.

#### **JURY DEMAND**

The defendants demand a trial by jury.

The Defendants,  
**ARSENBERGER TRUCKING, INC., and  
J.T. FOSBRINK**  
By their attorney:  
MORRISON MAHONEY LLP

/s/ Lee Stephen MacPhee  
Lee Stephen MacPhee  
BBO # 312400  
250 Summer Street  
Boston, MA 02210  
(617) 439-7500

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF System will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants this 5<sup>TH</sup> day of April, 2007.

/s/ Lee Stephen MacPhee  
Lee Stephen MacPhee